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In re Application of:
ROBERT PORTER CROSS ET AL.
Serial No.: 10/671,167
Filed: 25 September 2003
Docket: MUL-0005-D1

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed on May 27, 2005, and supplemented on June 24, 2005 and on June 28, 2005, via facsimile transmission, to withdraw the holding of abandonment of the above-identified application under 37 C.F.R. § 1.181.

The petition to withdraw the holding of abandonment is **GRANTED**.

An Office action (a non-final rejection) was mailed August 24, 2004, setting a three-month shortened statutory period for reply. In the absence of receipt of a response, the case became abandoned as a matter of law at the end of the period for reply, which could not extend past February 24, 2005.

Petitioner asserts that applicant did not receive the Office Action. In support of the assertion, petitioner submitted as evidence of lack of receipt of the Office action: 1) a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the docket report indicates that the Office communication was not received, and 2) a copy of the file jacket. The petition was timely filed in response to petitioner's telephone inquiry of May 9, 2005, which provided petitioner with notice that no response had been received. Petitioner supplied supplemental information on June 24, 2005, in response to a telephone inquiry, detailing petitioner's receipt and docket recording procedures. Petitioner further submitted an affidavit by Robert Cross, who attests that he has primary responsibility for attending to all correspondence from the Office, and that the Office communication was not received.

A review of the file record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to

practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

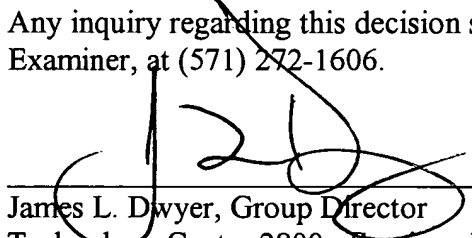
Although no docket records were kept by petitioner, the petition is accompanied by an affidavit by Robert H. Cross, who is responsible for attending to all correspondences received from the Office at the address of record, attesting that the Office action was not received because had it been received, it would have been matched to the appropriately labeled folder, a notation would have been entered on the file jacket, and a copy would have been forwarded to their attorney. Petitioner's detailed affidavit of the reasonable recording procedures, timely filed statement and evidentiary support meet the criteria set forth in M.P.E.P. § 711.03(c), and provide a showing that the Office action was not received.

Petitioner is advised to keep detailed records of all communications received from the Office, including the use of a docketing log in which all communications for all of petitioner's applications are entered upon receipt. As M.P.E.P. § 711.03(c) further states:

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

The holding of abandonment is therefore withdrawn and the Notice of Abandonment vacated. The Office action (non-final rejection) shall be remailed with the period for response reset to run three months from the date the action is remailed. Extension of this period is governed by 37 C.F.R. § 1.136(a).

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.



James L. Dwyer, Group Director
Technology Center 2800 - Semiconductors,
Electrical & Optical Systems & Components